HON'BLE MR JUSTICE A. GOPAL REDDY

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WRIT PETITION NO.19906 OF 1995

DATE:24.03.2006

Between:

Oguri Droupathamma

..... PETITIONER

AND

Society for Training and Employment
Promotion (SETRAJ), Kakinada,
Rep. by its Chief Executive Officer,
Ramanayyapeta, Kakinada, E.G. District &
Three others.

.....RESPONDENTS

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HON'BLE MR JUSTICE A. GOPAL REDDY

W.P. No.19906 OF 1995

ORDER:

This Writ Petition has been filed questioning the notice of the third respondent, dated 26.7.1995 under which, the petitioner was informed that since one Oguri Dharmarao, the son of the petitioner, failed to repay the loan of Rs.20,320/- obtained from the first respondent, the property belonging to the petitioner, who stood as guarantor, would be sold in public auction and the sale proceeds would be credited to the account and for the balance of the debt, steps would be taken against her.

It is not in dispute that the Society for Training and Employment Promotion, Kakinada-first respondent is established by the Government of A.P. for training and employment promotion and it extends support by advancing margin money to the entrepreneurs, who seek self employment through public finance institutions. The margin money would be disbursed through the financial institutions and in case, the loanee gets financial assistance by way of a bank loan, the first respondent pays the margin money to the bank and the entire amount viz. the bank loan and the margin money, paid to the loanee, would be secured by mortgage. One Oguri Dhrmarao, the son of the petitioner, started an industry under the name and style of M/s Lakshmi

Rubber Industries, for which the second respondent-Bank rendered financial assistance by way of loan of Rs.24,000/- under cash credit account No.C.C.S.S.I.8/40. The loan amount of Rs.24,000/- includes the 25% margin money advanced by the first respondent. In this 25% margin money, borrower paid an amount of Rs.1,000/- and 4,973/- was paid by the first respondent. Further, the second respondent-Bank also sanctioned another amount by way of term loan of Rs.12,000/- under account No.T.L.10/15. In the said amount, 25% margin money i.e. Rs.3,000/- was paid through the first respondent on 15.4.1988. The petitioner being the mother, created a mortgage by depositing her title deed of an immovable property as a security for the entire amount. The borrower paid the loan amount advanced by the second respondent-Bank in installments and both the accounts i.e. C.C.S.S.I. 8/40 and T.L.10/15 were closed on 30.5.1990. Since the margin money advanced by the first respondent was not paid by the borrower, the impugned notice was issued to the petitioner, who stood as guarantor by mortgaging her title deeds, informing her that the property mortgaged to the first respondent, would be sold by the Mandal Revenue Officer, Malikipuram-third respondent, if she fails to repay the said amount.

It is contended by the learned counsel for the petitioner that on demand made by the second respondent-Bank in its notice dated 19.5.1990, the entire outstanding amount of Rs.29,903.20 ps. (Rs.18,577.50 + Rs.11,325.70), was paid to the bank on 30.5.1990 in which, the amount of Rs.11,325/- is payable to the first respondent. It is contended that as the first respondent paid the margin money through the second respondent-Bank, the borrower paid Rs.11,325/- to the bank and it is for the second respondent-Bank to credit the said amount to the account of first respondent. Hence, the issuance of impugned notice is arbitrary and illegal.

On behalf of the first and third respondents a counter affidavit has been filed stating that on the second respondent-Bank sanctioning the loan to Oguri Dharma Rao for the manufacturing industry, 20% of the margin money was paid by the first respondent, which works out to Rs.8,000/- and the same has been released through the Bank after the process of documentation was completed by the borrower. In the bond executed by the borrower in favour of the first respondent and the petitioner, it was made clear that the loan amount has to be directly paid to the first respondent but not through the bank. Therefore, the first respondent is entitled to recover the margin money advanced to the borrower, from the petitioner as she stood as

guarantor.

In the counter affidavit filed by the second respondent-Bank it is stated that they are not under obligation to recover the amount from the borrower that was due to the first respondent. Whatever the amount recovered by the Bank from the borrower was the actual loan amount that was advanced to the borrower and accordingly they closed the accounts and the Bank had never collected any amount on behalf of the first respondent and it is not their business to collect the amount on its behalf. It is stated that the first respondent aids the borrower only to the extent of providing margin money by way of loan and the matter is exclusively between the borrower and the first respondent.

Heard the learned counsel for the petitioner and the learned counsel for the first and second respondents.

It is not in dispute that the first respondent credited the margin money to the second respondent-Bank and the Bank in turn, credited it to the account of the petitioner and released the loan amount including the margin money of the first respondent in favour of the borrower for purchaser of the machinery under the cash credit loan and also under the term loan and the entire outstanding amount payable to the bank has been cleared by the borrower. But, that does not relieve the borrower from the liability of paying the amount advanced by the first respondent in the form of margin money. The contention of the learned counsel for the petitioner that the borrower paid the entire amount to the second respondent-Bank including the amount due to the first respondent and it is for the Bank to credit the amount to the account of the first respondent cannot be accepted for the reason that there is no tripartite agreement among the borrower, first respondent and second respondent-Bank to the effect that the margin amount advanced by the first respondent would be recovered by the bank and credited to the account of first respondent. Except the submission that the borrower cleared off the entire amount to the bank including the margin money advanced by the first respondent and the petitioner is not under obligation to pay any amount, no other submission is made by the learned counsel for the petitioner.

In the absence of any tripartite agreement among the bank, borrower and the first respondent, the second respondent-Bank is not under obligation to collect the margin amount advanced by the first respondent and credit the same to its account.

Hence, since the petitioner stood as guarantor, the first respondent has rightly issued the impugned notice for due recovery of the margin money advanced to the borrower. However, it is open for the petitioner to approach the first respondent with necessary evidence to prove that the amount due and payable to it has already been paid by the borrower to the second respondent-bank, in which event, the first respondent is under obligation to consider the same and pass appropriate orders.

With the above observations, the writ petition is dismissed. No costs.

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A. GOPAL REDDY, J

23rd MARCH, 2006.

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